



**Billing Code 4310–55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R3–ES–2014–N037] [30120–FXHC11220300000–145]**

**Notice of Availability of Draft Habitat Conservation Plan; Receipt of Application for**

**Incidental Take Permit; Commonwealth Edison**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Commonwealth Edison, for an incidental take permit (ITPs) under the Endangered Species Act of 1973 (ESA). If approved, the permit would authorize incidental take of the federally endangered Hine’s emerald dragonfly, Illinois threatened black-billed cuckoo, and Illinois endangered Blanding’s turtle and spotted turtle. The applicant has prepared a low-effect habitat conservation plan (HCP) to cover activities

associated with electrical utility right-of-way maintenance in Cook, DuPage, and Will Counties, Illinois. We invite public comments on the application and draft HCP.

**DATES:** To ensure consideration, please send your written comments on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send written comments via one of the following methods:

*U.S. mail:* Field Supervisor, Attn: Louise Clemency, U.S. Fish and Wildlife Service, 1250 S. Grove, Ste. 103, Barrington, IL 60010; *Fax:* 847-381-2285; or *Email:* [louise\\_clemency@fws.gov](mailto:louise_clemency@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Kristopher Lah, 847-381-2253 (telephone); 1-800-877-8339 (TTY).

**SUPPLEMENTARY INFORMATION:** We have received an application from Commonwealth Edison (ComEd), for an incidental take permit (ITP) (TE28464B) under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; ESA). If approved, the permit would authorize incidental take of the Hine's emerald dragonfly (*Somatochlora hineana*), Illinois threatened black-billed cuckoo (*Coccyzus erythrophthalmus*), and Illinois endangered Blanding's turtle (*Emydoidea blandingii*) and spotted turtle (*Clemmys guttata*) (listed species).

Under the ESA, we announce that we have gathered the information necessary to evaluate the application for permit issuance, including the HCP, which provides measures to minimize and mitigate the effects of the proposed incidental take of the listed species.

## **Background**

The planning area includes 403 acres of right of way (ROW) and easements within Hine's emerald dragonfly critical habitat units 1–7 in Cook, DuPage, and Will Counties, Illinois. ComEd operates and maintains approximately 7 miles of electric transmission lines and approximately 12 miles of ROW within the planning area. The permit period is 20 years, with annual updates of information to assess if the HCP needs to be updated or amended.

ComEd's activities within the planning area include continuing line maintenance; routine inspections; performing switching operations; repairing, replacing, removing and re-locating power lines and structures; and managing vegetation under power lines. Specifically, all distribution and transmission structures located in the planning area will be either (1) relocated outside of critical habitat or (2) replaced in kind over the next 20 years as part of normal operations and planned replacement. Although all ComEd structures in the planning area have been included as part of the covered activities in this HCP, ComEd does not anticipate replacing each structure, but has provided them as a reference for planning and to determine appropriate mitigation. No work will occur within Hine's emerald dragonfly larval habitat areas. Existing and proposed paths will be used to access structures, and matting will be used in wetland areas to minimize impacts. Proposed work includes plans for access to all structures and facilities within the

planning area. Measures will be implemented to mitigate take from the proposed activities.

Planned work that will occur year round without restrictions includes:

(1) Access and visual line inspections conducted on foot in wetland and upland areas.

(2) Access by foot or operational vehicles along existing trails or paths to structures or lines in upland areas.

(3) Vegetation management in upland and wetland areas that can be completed on foot.

(4) Utilizing brush hogs or similar equipment in upland areas.

(5) Stockpiling or burning piles of cut vegetation in uplands. Stockpiles will be burned as soon as possible after cutting to avoid potential impacts to turtles and other species.

(6) Spot applying herbicides on cut-stumps within wetlands within 65 feet (20 meters) of Hine's emerald dragonfly larval habitat. The only accepted herbicide within the 65-foot buffer will be one formulated for aquatic use. No surfactants or adjuvants of any kind will be added to the commercial herbicide formula that has been approved for aquatic use. Herbicide will be applied to cut-stump immediately after cutting and will be dripped onto the stump with the head of the nozzle touching the stump. Herbicides will not be applied within 72 hours of forecasted precipitation events.

(7) Maintenance of existing roads and access paths in upland areas.

Planned work that will occur outside the Hine's emerald dragonfly flight season (i.e., May 15 through September 15) each year includes: (1) Boom spraying herbicide

over woody vegetation in wetland and upland areas with amphibious vehicles or all-terrain vehicles outside of Hine's emerald larval habitat; (2) Use of a helicopter to conduct inspections, maintenance, repairs and structure removal; and (3) Utilizing an Unmanned Aerial Vehicle to remotely inspect ComEd structures and equipment. These units are typically less than 4 feet across, fly between 25 and 35 mph, and weigh only a few pounds.

Planned work that will occur year round but not within Hine's emerald dragonfly larval habitat (65-foot established buffer) or within the vicinity of known leafy prairie clover and Lakeside daisy plants includes: (1) Foliar spot treatment of invasive woody species and tall-growing woody vegetation within wetlands; (2) Mowing woody vegetation with mower weighing +/- 14,000 pounds in upland areas; (3) Access by amphibious vehicles and boats at wetland locations with water levels deeper than 12 inches; (4) Crossing wetlands with amphibious vehicles (e.g., wide track vehicle) to reach a structure; (5) Access by operational vehicles on matting in wetland areas; (6) Installation and removal of matting by cranes in wetland areas; (7) Installation and removal of silt fence or other temporary sediment controls; (8) Relocation, removal, or replacement of structures; (9) Installation of structures in new locations; and (10) Ground disturbing activities.

Planned work located within 65 feet of Hine's emerald dragonfly larval habitat areas or within the vicinity of known leafy prairie clover and Lakeside daisy plants that will be limited to November 1 through March 15 includes: (1) Mowing woody vegetation with mower weighing +/- 14,000 pounds; (2) Access by operational vehicles on matting in wetland areas; (3) Use of a bridge that spans the Hine's emerald dragonfly larvae

occupied rivulet; (4) Installation and removal of matting by cranes; (5) Installation and removal of silt fence or other temporary sediment controls; (6) Relocation, removal, or replacement of structures; (7) Installation of structures in new locations; and (8) Ground-disturbing activities.

### **Proposed Action**

Section 9 of the ESA prohibits the “taking” of threatened and endangered species. However, provided certain criteria are met, we are authorized to issue permits under section 10(a)(1)(B) of the ESA for take of federally listed species when, among other things, such a taking is incidental to, and not the purpose of, otherwise lawful activities. Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered and threatened species, or to attempt to engage in any such conduct. Our implementing regulations define “harm” as significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Harass, as defined, means “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering” (50 CFR 17.3). However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met: (1) The taking will be incidental; (2) The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) The applicant will develop a proposed HCP and ensure that adequate funding for the HCP will be provided; (4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

The applicant seeks an incidental take permit for proposed covered activities within 403 acres of ROW and easement within the planning area. The draft HCP analyzes take attributable to the applicant's proposed activities. If issued, the ITP would authorize potential incidental take of the listed species consistent with the applicant's HCP. To issue the permit, the Service must find that the application, including its HCP, satisfies the criteria of section 10(a)(1)(B) of the ESA and the Service's implementing regulations at 50 CFR Part 13, 17.22, and 17.32.

The FWS has determined that the ComEd HCP qualifies as a low-effect HCP, as defined by our Habitat Conservation Planning Handbook (November 1996). Determination of low-effect HCP is based on the following three criteria: (1) Implementation of the proposed HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the proposed HCP would result in minor or negligible effects on other environmental

values or resources; and (3) impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

We request comments on the ComEd permit application, including the HCP, and our preliminary determination that the HCP qualifies as a low-effect HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA). We explain the basis for this determination in our Low Effect Screening Form, which is also available for public review, upon request. Based upon our preliminary determinations, we do not intend to prepare further NEPA documentation.

### **Reviewing Documents and Submitting Comments**

Please refer to permit number TE28464B when submitting comments. The permit application and supporting documents (ITP application, HCP) may be obtained on the Internet at <http://www.fws.gov/midwest/endangered/permits/hcp/r3hcps.html>.

Persons without access to the Internet may obtain copies of the draft HCP by contacting the U.S. Fish and Wildlife Service office given under **ADDRESSES**, above. The draft document will also be available for public inspection, by appointment, during normal business hours (8 a.m. to 4 p.m.) at the office given under **ADDRESSES** above.

Written comments will be accepted as described under **ADDRESSES**, above.



**Public Availability of Comments**

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment, including your personal identifying information, may be made available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 et seq.) and its' implementing regulations (50 CFR 17.22), and NEPA (42 U.S.C. 4371 et seq.) and its' implementing regulations (40 CFR 1506.6; 43 CFR Part 46).

**Dated: March 12, 2014**

**Lynn Lewis,  
Assistant Regional Director,  
Ecological Services,  
Midwest Region.**

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